

CLASSIFICATION SHEET

This document relates to the following request:

June 1, 2010

References: VCO/AEPE/CEAA/Q6010002M-ROIM

**Minas Argentinas (Barbados) S.à r.l. – 2010 2413 068**

1. Key topics: migration, participation exemption, merger

2. Name of the advisor : PwC

3. Corporate group's name, or fund sponsor: Yamana Gold

4. Name of the project: Project Andes

5. Amount intended to be invested:

6. Date of receipt:

BUREAU D'IMPOSITION SOC. 6  
ENTRÉE

- 1 JUIN 2010



**For the attention of Mr. Marius Kohl**

Administration des Contributions Directes  
Bureau d'Imposition des Sociétés VI  
18, Rue du Fort Wedell  
L - 2982 Luxembourg

PricewaterhouseCoopers  
Société à responsabilité limitée  
400, route d'Esch  
B.P. 1443  
L-1014 Luxembourg  
Telephone +352 494848-1  
Facsimile +352 494848-2900  
www.pwc.com/lu  
info@lu.pwc.com

COPY

June 1, 2010

References: VCO/AEPE/CEAA/Q6010002M-ROIM

**Minas Argentinas (Barbados) S.à r.l. – 2010 2413 068**

Dear Mr. Kohl,



In our capacity as tax consultant for the above-mentioned client, we discussed in our meeting dated April 21, 2010 the tax treatment applicable to the transactions foreseen by our client. This letter aims at confirming the conclusions reached during this meeting, and will serve as a basis for the preparation of the tax returns of the Luxembourg company involved.

## **A. Background information**

1. Yamana Gold Inc. (hereafter referred to as "Yamana") is a Canadian-based gold producer with exploration properties and land in Brazil, Argentina, Chile, Mexico and Colombia. Yamana is listed on Toronto Stock Exchange, New York Stock Exchange and London Stock Exchange. Furthermore, with 9,300 worldwide employees, Yamana's revenues amounted to approx. USD 1.2 bn. for the year ended December 31, 2009.
2. Yamana Argentina Holding BV ("YAH BV"), a company incorporated under the laws of the Netherlands, currently owns 100% of Minas Argentinas (Barbados) Inc. ("MABI"). MABI, a company incorporated under the laws of Barbados, currently owns the 99,995% of the shares of Yamana Rentista de Capitales Mobiliarios Limitada ("YAH Chile"), a company incorporated in Chile.
3. The only assets of YAH Chile are the shares held in Minas Argentinas SA ("MASA"), a company incorporated under the laws of the Republic of Argentina. These shares were acquired by YAH Chile due to the contribution of MASA's shares done by MABI, according to public deed dated May 15<sup>th</sup>, 2009.

## **B. Envisaged transactions**

4. Yamana Group contemplates now to simplify its current structure, in order to meet the requirements established by a foreign bank or financial institution to become eligible for obtaining financial assistance.
  - (i) Yamana Group has entered into a business restructuring plan that would imply the migration of MABI from Barbados to Luxembourg.
  - (ii) Subsequently, within a short period after the migration, MABI Sarl will be merged into YAH BV which will be the surviving entity.
5. A simplified chart of the Yamana Group is available in **Appendix 1**.
6. The Envisaged Transactions are contemplated to be implemented prior to the end of June 2010.

## **C. Applicable tax treatment**

### **C.1. Migration of MABI from Barbados to Luxembourg**

7. MABI has migrated its central administration (management and control) and its statutory seat from Barbados to Luxembourg. Further to the migration, Minas Argentinas (Barbados) S.à r.l. ("MABI S.à r.l.") was registered in Luxembourg on April 27, 2010. Upon the migration the bylaws of MABI were changed and a new board of managers was appointed (2 Luxembourg resident individuals and one Canadian individual were appointed as managers). MABI has its registered office and place of central administration (management and control) in Luxembourg and it can therefore be considered as a fully taxable Luxembourg company. It is thus tax resident in Luxembourg within the meaning of Article 159 of "Luxembourg Income Tax Law ("LITL").
8. The migration did not affect the continuity of the legal personality of MABI, meaning that the legal personality has been maintained during the entire migration process without interruption (as Barbados allows the migration of a company while maintaining its legal personality, Luxembourg would equally accept the legal continuity). Basically, the migration of MABI from Barbados to Luxembourg did not terminate its existence. However, further to the migration, MABI is no longer regarded as being incorporated under the laws of Barbados but instead as having been continued as a Luxembourg tax resident.
9. At the time of the migration, it has to be noted that MABI S.à r.l. only held the YAH Chile shares, meaning that no other assets were held by MABI S.à r.l. It has been determined that the fair market value of MABI Sarl's shares did correspond to at least their book value.

10. Although, Article 35 of the LITL offers the possibility, without obligation, for the taxpayer to consider tax-wise a step-up in value (up to the amount of the fair market value, if this amount is higher than the book value) of the assets/liabilities held at the time of the migration to Luxembourg, MABI Sarl decided to continue the book value of the YAH Chile shares, for both accounting and tax purposes. Therefore, the migration has been performed without having a step-up in basis in Luxembourg and without recognizing any income or loss derived from the migration, being tax neutral from a Luxembourg perspective.

## **C.2. Availability of the Luxembourg participation exemption**

11. Capital gains received by a Luxembourg fully taxable resident company should, in principle, be subject to corporate income tax and municipal business tax at the global rate of 28.59% for the year 2010 for Luxembourg City. However, MABI Sarl should benefit from the Luxembourg participation exemption regime on capital gains derived from a non-EU resident company (i.e. YAH Chile).
12. MABI S.à r.l. holds a 99,995% participation in the share capital of YAH Chile for an uninterrupted period of at least 12-months. Considering that there is a continuity of the legal personality of MABI upon migration to Luxembourg, MABI Sarl should not be required to comply with a new holding period of 12 months (with respect to its participation in YAH Chile). Therefore, the acquisition dates of the participation held by MABI S.à r.l. in YAH Chile will remain the same as the dates of acquisition registered in the accounts of the company when it was resident in Barbados (i.e. 19 May 2009).
13. YAH Chile is a non-resident capital company that is fully liable (in its state of residence) to a tax corresponding to the Luxembourg corporate income tax. Notably, such condition is fulfilled if the foreign subsidiary is subject to a minimum corporate income tax of 10.5% on a taxable base similar to the Luxembourg one. A comprehensive analysis of the subject to tax test for YAH Chile and respectively for MASA is available in **Appendix 2** and **Appendix 3**.
14. As a result, YAH Chile shall be viewed as a non-resident capital company fully liable (in its state of residence) to a tax corresponding to the Luxembourg corporate income tax within the meaning of the Grand Ducal decree of December 21, 2001.
15. MABI S.à r.l. will benefit from the participation exemption regime for dividends and capital gains for its participation in YAH Chile, given that the conditions of Article 166 LITL and Grand Ducal Decree of 21 December 2001 are met. Also, MABI Sarl will benefit from the participation exemption for net wealth tax purposes for the participation in YAH Chile.

## **C.3. Tax neutral cross-border Merger**

16. After its migration to Luxembourg, MABI S.à r.l. will merge into YAH BV. At the time of the merger, the sole assets held by MABI S.à r.l. will be the YAH Chile shares.

17. A tax neutral merger may be achieved based on the provisions of the EU Merger Directive transposed into the Luxembourg legislation. The tax neutral merger regime foreseen by Article 170bis<sup>1</sup> LITL will be applied.
18. As per LITL, a tax neutral cross-border merger is subject to the following conditions:
  - (i) The transfer of assets and liabilities must be carried out in return for either an allotment of shares or the cancellation by the receiving company of the shares held in the transferring company;
  - (ii) The receiving company should be a EU tax resident company, as defined in Article 3 of the amended Directive 90/434/EEC (hereafter referred to as the “Mergers Directive”); and
  - (iii) The transfer should be done in such a way that latent capital gains continue to be subject to ultimate Luxembourg taxation.
19. Due to the merger, YAH BV receives from MABI S.à r.l. all its assets and liabilities against cancellation of the shares held by YAH BV in MABI S.à r.l. Also, the Dutch BV is listed in Article 3 of the Merger Directive.
20. In view of the above, and considering that the only asset of MABI S.à r.l. is the participation in YAH Chile which benefits from the Luxembourg participation exemption regime, in practice MABI S.à r.l. will be allowed to use the book value (tax and accounting wise) of its assets / liabilities for the purpose of the merger with YAH BV, without recognising any capital gains / loss upon the merger and without maintaining a permanent establishment in Luxembourg.

\*  
\*                      \*

---

<sup>1</sup> Article 170bis refers to Article 170 for the conditions applicable to a tax neutral cross-border merger

21. We remain at your disposal should you need any further information and would like to thank you for the attention that you will give to our letter.

Yours faithfully,



Valéry Civilio  
Partner

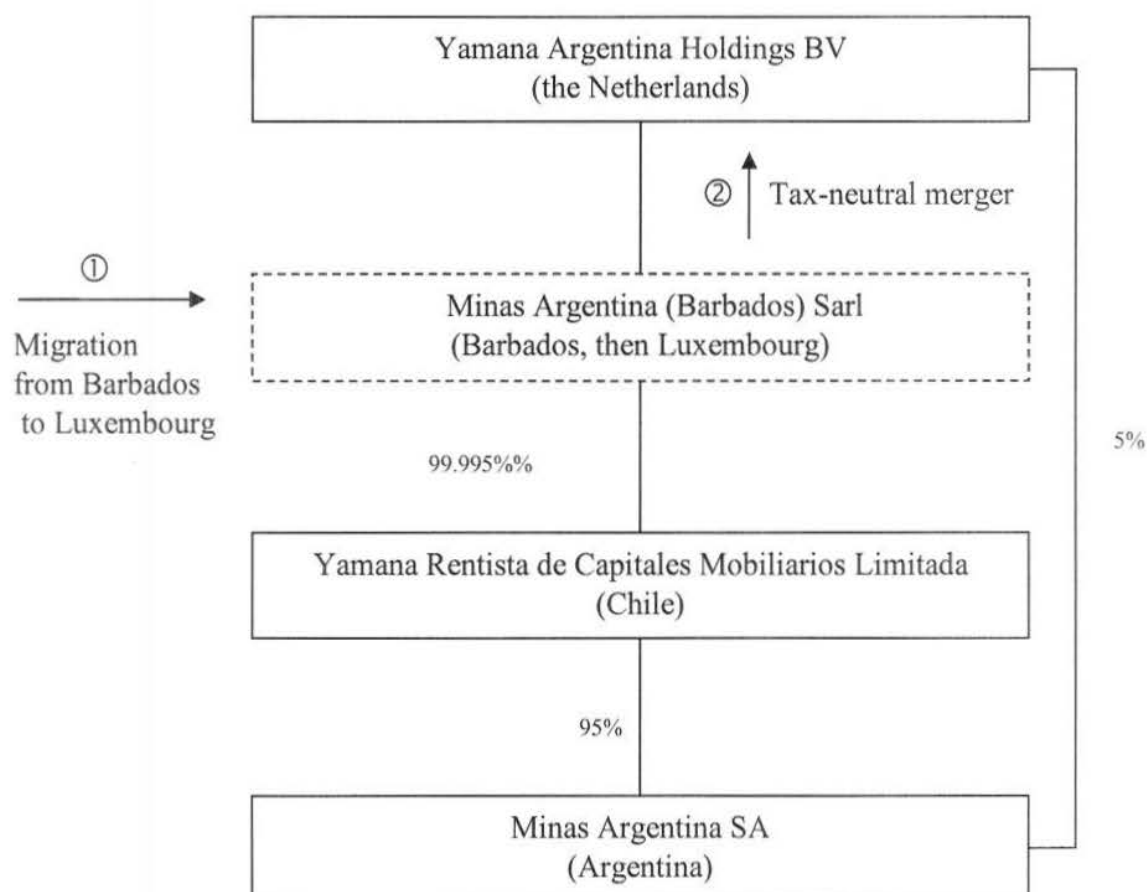


Razvan Bruno Ifrim  
Senior Manager

|                   |                                  |
|-------------------|----------------------------------|
| <b>Appendix 1</b> | Simplified group structure chart |
| <b>Appendix 2</b> | Subject to tax test on YAH Chile |
| <b>Appendix 3</b> | Subject to tax test on MASA      |

*This tax agreement is based on the facts as presented to PricewaterhouseCoopers S.à r.l. as at the date the advice was given. The agreement is dependent on specific facts and circumstances and may not be appropriate to any party other than the one for which it was prepared. This tax agreement was prepared with only the interests of Yamana Gold Inc. in mind, and was not planned or carried out in contemplation of any use by any other party. PricewaterhouseCoopers S.à r.l., its partners, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) however arising, and shall not be liable in respect of any loss, damage or expense of whatever nature which is caused to any other party.*

Simplified group structure chart





### Subject to tax test on YAH Chile

1. YAH Chile is a capital company under the form of a limited liability company, tax resident in Chile, and subject to the normal local corporate income tax at a rate of 17% on its net accrued income.
2. Yamana Chile is not subject to a special regime for Income Tax purposes, however, its main activity is holding, namely, it holds 95% participation in MASA. The dividends / capital gains from MASA (its only subsidiary) would be treated as exempt income at the level of YAH Chile due to the Chile-Argentina Double Tax Convention.
3. The condition where the YAH Chile is required to be "*fully subject to a tax corresponding to the Luxembourg one*" (Article 166(2)3 LITL) is usually analyzed at two levels: (i) a minimum tax rate, and a (ii) similar tax base.
4. According to the notes to the Article 166 from LITL, a *tax corresponding to the Luxembourg one* would be a tax levied mandatorily by a Governmental body, at a rate not lower than half of the Luxembourg CIT rate (i.e. currently 10.5%).
5. Chile levies a 17% tax rate on corporate income, however, in order to measure that the taxable base of the Chilean entity is similar to the Luxembourg standards, we need to analyse whether the exemption of dividend / capital gain from MASA available at the level of YAH Chile would also be applicable at the level of MABI Sarl.

## Appendix 3

### Subject to tax test on MASA

1. MASA is a corporate entity with legal personality different from its shareholders. Moreover, the responsibility of the shareholders is limited to the amount of the share capital subscribed. MASA is tax resident in Argentina and it is subject to 35% corporate tax rate on the taxable income.
2. Within the legal framework established in Argentina to promote foreign investment, MASA may benefit from a special regime under the scope of the Mining Investment Law ("MIL"). Entities benefiting from MIL may enjoy a tax stability regime (consisting in a guarantee that the current corporate income tax rate of 35% will not be increased) granted for a period of 30 years since the feasibility study was submitted, exemption from nearly all import duties, accelerated depreciation regime for certain assets for income tax purposes, plus double deduction for the exploration expenses.
3. For the financial year 2008 MASA was in a tax loss position without applying either the double deduction or the accelerated depreciation (accelerated depreciation cannot be used for producing a loss but only for reducing the taxable basis).
4. MASA recorded a nil taxable base for the financial year 2009, due to the fact that the taxable basis of MASA was reduced by the double deduction and subsequently, by the accelerated depreciation. However, if we only take into account the double deduction of exploration expenses, MASA would still be in a taxable position, the effective tax rate being about 30%.
5. The accelerated depreciation is available for certain assets such as machinery, equipment, vehicle and facilities for mining projects. The accelerated depreciation is a temporary tax deferral and finally, the overall tax burden of MASA would be similar for a Luxembourg entity with the same activity during the useful lives of the assets.
6. In view of the above we conclude that MASA is not subject to a tax regime more preferential than the Luxembourg one, and therefore should YAH Chile be a resident of Luxembourg, it would benefit from the participation exemption regime for the shareholding in MASA.



LE GOUVERNEMENT  
DU GRAND-DUCHÉ DE LUXEMBOURG  
Administration des contributions directes

Bureau d'imposition  
Sociétés 6

**For the attention of Valéry Civilio**

PricewaterhouseCoopers  
400, route d'Esch  
B.P. 1443  
L – 1014 Luxembourg

Companies involved :

Minas Argentinas (Barbados) S. à r.l. – 2010 2413 068

– 4 JUIN 2010

Dear Sir,

Further to your letter dated 1<sup>st</sup> June 2010 and VCO/AEPE/CEAA/Q6010002M-ROIM relating to the transactions that the group Yamana Gold would like to conduct, I find the contents of said letter to be in compliance with current tax legislation and administrative practice.

It is understood that my above confirmation may only be used within the framework of the transactions contemplated by the above-mentioned letter and that the principles described in your letter shall not apply ipso facto to other situations.

Le préposé du bureau  
d'imposition Sociétés 6  
Marius Kohl

